

Application No. 10/825,522
Amendment dated November 10, 2008
Reply to Final Office Action of September 10, 2008

REMARKS

Applicant amended independent claims 1, 6, and 11 to further define Applicant's claimed invention. Support for the amendment to independent claims 1, 6, and 11 can be found in the specification at least on page 8, lines 3-5, page 9, lines 24-30, page 18, lines 19-20, and in FIGS. 5 and 7. No new matter has been added.

In the Office Action, the Examiner rejected claims 6, 7, 11, and 12 under 35 U.S.C. § 102(b) as being clearly anticipated by U.S. Patent No. 5,645,598 to Brosnahan, III ("Brosnahan"); and rejected claims 1-5, 8-10, and 13-15 under 35 U.S.C. § 103(a) as being unpatentable over Brosnahan.

In KSR International Co. v. Teleflex Inc. et al., the Supreme Court reaffirmed the framework for governing obviousness under 35 U.S.C. § 103(a) as set forth in Graham et al. v. John Deere Co. of Kansas City et al., 383 U.S. 1, 148 U.S.P.Q. 459 (1966). (See KSR v. Teleflex, 127 S.Ct. 1727 (2007).) Under Graham v. John Deere, a combination of references that does not teach or suggest each and every element of the claimed invention supports a finding of nonobviousness. Applicant submits that Brosnahan does not teach or suggest each and every element of Independent claims 1, 6, and 11, as now amended.

Applicant amended independent claims 1, 6, and 11 to recite a method including providing an Implant comprising opposite threaded arcuate portions, a medial side, and a hollow interior, "each of the arcuate portions and the medial side" of the implant "having at least one opening in communication with the hollow interior." Brosnahan discloses a spinal fusion device "in which the two side walls 48, 50 are concave in shape along the longitudinal axis LA of the body 12b." (Brosnahan, col. 5, lines 50-52.) FIGS. 12 and 14 of Brosnahan show that neither one of side walls 48, 48b has an opening in communication with the hollow interior of the implant as recited in independent claims 1, 6, and 11.

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Brosnahan teaches that body 12 "includes at least two indentations 26 on its outer surface 18" and that the "placement of indentations 26 provides for contact between the bone attachment material 27 and the end plates E of the opposing vertebral bodies VB when implant 10 is inserted into at least one bore formed between the opposing vertebral bodies VB." (Brosnahan, col. 3, lines 55-56; col. 4, lines 2-6; FIGS. 1-5, 8, and 13.) Applicant submits that Brosnahan does not teach or suggest an implant with "each of the arcuate portions and the medial side of the first of the implants having at least one opening in communication with the hollow interior" as recited in independent claims 1, 6, and 11. It is submitted that the Examiner's rejections of claims under 35 U.S.C. §§ 102(b) and 103(a) over Brosnahan have been overcome.

Applicant submits that independent claims 1, 6, and 11 are patentable and that dependent claims 2-5, 7-10, and 12-15 dependent from one of independent claims 1 and 6, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-15 in condition for allowance. Applicant submits that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicant submits that the claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

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any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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Dated: November 10, 2008

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